

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

JAMES M. DUNLAP,

Plaintiff,

Civil No. 2:11-cv-00272-RBS -DEM

v.

**COTTMAN TRANSMISSION
SYSTEMS, LLC and TODD P.
LEFF,**

Defendants.

DEFENDANTS' MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Cottman Transmission Systems, LLC (“Cottman”) and Todd P. Leff (“Leff”) move for an order dismissing the Complaint for failure to state a claim upon which relief can be granted. Pursuant to Rule 12(b)(2), Defendant Leff further moves for an order dismissing the complaint as to him for lack of personal jurisdiction.

As discussed in Defendants’ Memorandum in Support of this Motion, Count I of the Complaint (for violation of Virginia Code §§ 18.2-499 and 18.2-500) fails to state a claim because the plaintiff has failed to allege the commission of any unlawful act. Counts II and III (for tortious interference) fail to state a claim because they are barred by Virginia’s two-year statute of limitations and, with respect to Defendant Leff, by the intracorporate immunity doctrine and the well-settled rule that an agent cannot interfere with the contracts of its principal. Finally, the Complaint should be dismissed as to Defendant Leff for lack of personal jurisdiction because he has had insufficient contacts with the Commonwealth of Virginia to meet the requirements of the Virginia long-arm statute (Va. Code § 8.01-328.1(A)) and due process.

For the foregoing reasons, and as more fully set forth in the Defendants' Memorandum of in Support being submitted herewith, the defendants respectfully request that the Complaint be dismissed with prejudice.

Respectfully submitted,

/s/
James C. Rubinger
Virginia Bar No. 20317
Benjamin B. Reed
Virginia Bar No. 78190
Counsel for Defendants
PLAVE KOCH PLC.
12355 Sunrise Valley Drive, Suite 230
Reston, VA 20191
Tel: (703) 774-1208
Fax: (703) 774-1201
jrubinger@plavekoch.com
breed@plavekoch.com

May 25, 2011

WARNING TO PRO SE PLAINTIFF PURSUANT TO LOCAL RULE 7(K)

Pursuant to Local Rule 7(K) and *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the defendants provide the following warning to the plaintiff:

- (1) You are entitled to file a response opposing the motion and any such response must be filed within twenty-one (21) days of the date on which the dispositive or partially dispositive motion is filed; and
- (2) The Court could dismiss the action on the basis of the defendants' papers if the you do not file a response; and
- (3) You must identify all facts stated by the defendants with which you disagree and must set forth your version of the facts by offering affidavits (written statements signed before a notary public and under oath) or by filing sworn statements (bearing a certificate that it is signed under penalty of perjury); and
- (4) You are also entitled to file a legal brief in opposition to the one filed by the defendants.

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of May, 2011, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system and I hereby certify that I will mail the document by U.S. mail to the following non-filing user:

James M. Dunlap
1312 Debree Avenue
Norfolk, VA 23517

/s/

Benjamin B. Reed
Virginia Bar No. 78190
Counsel for Defendants
PLAVE KOCH PLC.
12355 Sunrise Valley Drive, Suite 230
Reston, VA 20191
Tel: (703) 774-1208
Fax: (703) 774-1201
breed@plavekoch.com